

502-1-1101

REMOVAL ACTION CONTRACT
for the
Little Bit Rad Site, TX0000605291 (06JD)
Located in the City of Beaumont, Jefferson County, Texas

BETWEEN THE U.S. ENVIRONMENTAL PROTECTION AGENCY
AND THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

1. GENERAL AUTHORITY

This Removal Action Contract (hereinafter "Contract" or "RAC") is entered into pursuant to §§ 104(a)(1), and (d) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 et seq., as amended to date; the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 (hereinafter referred to as the "NCP"); and other applicable Federal regulations.

2. PURPOSE

This Contract is an agreement between the United States Environmental Protection Agency ("EPA") and the Texas Natural Resource Conservation Commission ("TNRCC") (hereinafter EPA and TNRCC may be referred to collectively as the "parties" or individually as the "party"). The Governor has designated the TNRCC to interact with the EPA on behalf of the State of Texas (the "State") concerning response actions at the Little Bit Rad Site, City of Beaumont, Jefferson County, Texas (hereinafter the "Site"). This Contract documents the responsibilities of the Lead Agency (EPA), and of the Support Agency (TNRCC) during the CERCLA removal action. This is a Removal Action Contract and does not apply to a remedial action. Thus, it is not narrowly subject to all Superfund State Contract (SSC) requirements at 40 C.F.R. Part 35, Subpart O. The EPA proposes a removal action involving the excavation and offsite disposal of americium-241 contaminated soil and debris and the subsequent restoration of the property.

3. DURATION OF THIS CONTRACT

This Contract is effective upon execution by the EPA and the TNRCC, and shall remain in effect, until the removal action at the Little Bit Rad Site is technically complete and/or the final reconciliation of costs for the removal action at the Site has been satisfied (See Reconciliation Provision, Section 27, below), whichever is longer. The EPA and the TNRCC may agree to extend, by amendment (See Amendability Section 26, below), the duration of this Contract when the removal action for the Site takes longer or more time is needed for closeout or for reconciliation.

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4. DESIGNATION OF PRIMARY CONTACTS AND THEIR RESPONSIBILITIES

- A. The EPA has designated:

**Pat Hammack
Removal Team 1 (6SF-R1)
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733
(214) 655-2214**

to serve as the On-Scene-Coordinator ("OSC") for this Contract. The designated OSC may be changed by letter to the TNRCC signatories and incorporated by reference herein without amending this Contract.

- B. The TNRCC has designated:

**David Davis
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-2452**

to serve as the State Project Manager ("SPM") for this Contract. The designated SPM may be changed by letter to the EPA signatories and incorporated by reference herein without amending this Contract.

- C. The OSC and the SPM may make necessary project changes that do not substantially alter the scope of the removal action at the Site or increase the cost of the removal action. Significant changes will be documented in writing. Any disagreements between the OSC and SPM shall be resolved in accordance with the Issue Resolution Section, (Section 25), set forth below.

5. NEGATION OF AGENCY RELATIONSHIP

Nothing contained in this Contract shall be construed to create, either expressly or by implication, the relationship of agency between the EPA and the TNRCC. Any standards, procedures, or protocol prescribed in this Contract to be followed by the EPA or its contractors during the performance of its obligations under this Contract are for assurance of the quality of the final product of the actions contemplated by the Contract and do not constitute a right to control the actions of the EPA. The EPA (including its employees, agents, and contractors) is not authorized to represent or act on behalf of the TNRCC in any matter relating to the subject matter of this Contract, and the TNRCC (including its

employees, agents, and contractors) is not authorized to represent or act on behalf of the EPA in any matter relating to this Contract.

6. SITE DESCRIPTION

A description of the Site, including the location, background of events, physical characteristics (i.e., Site geology and proximity to drinking water supplies), the nature of the release (contaminant type and affected media); past response actions at the Site conducted by the EPA, the TNRCC, or others; and description of the removal action to be conducted at the Site is included in the Removal Action Memorandum (RAM) and is attached as Appendix 1 and incorporated herein by reference.

7. SITE-SPECIFIC STATEMENT OF WORK

A site-specific Statement of Work (SOW), indicating the tasks to be performed for the removal action will be attached, by amendment, as Appendix 2 and incorporated herein by reference.

8. PROJECT SCHEDULE

A general description of the project schedule/milestones for the Site, either by calendar year or Federal Fiscal quarter, is specified in the RAM. This project schedule may be adjusted by the joint authority of the OSC and the SPM, without a written amendment, unless there is an extended delay to the schedule. Changes that increase the project costs, or alter the scope of work, thereby affecting the TNRCC's ability to meet the conditions set out in this Contract, including cost-share requirements, shall necessitate a written amendment to this Contract (see Amendability, Section 26, below).

9. SITE ACCESS

A. Site Access

The EPA shall use its own authority to secure access to the Site and adjacent properties, as well as the rights-of-way and easements necessary for the EPA or its contractors to complete the removal action undertaken pursuant to this Contract.

B. TNRCC Access

Representatives of the TNRCC shall have access to the Site to review work in progress and shall comply with the Site safety plan. The TNRCC and the EPA may coordinate visits to the Site in advance.

C. EPA Liability Waiver

The EPA shall not be responsible for any harm to any TNRCC representative or other person arising out of, or resulting from, any act or omission by the TNRCC in the course of a visit to the Site by the TNRCC.

D. TNRCC Liability Waiver

The TNRCC shall not be responsible for any harm to any EPA representative or other person arising out of, or resulting from, any act or omission by the EPA in the course of a visit to the Site by the EPA.

10. SITE SAFETY PLAN

The EPA will be responsible for the development and implementation of the Site safety plan for this project. The Site safety plan will be consistent with the requirements of the NCP and applicable Federal and State safety standards and guidance.

11. THIRD PARTIES

A. Exclusion of Third-Party Benefits

This Contract benefits only the TNRCC and the EPA. It extends no benefit or right to any third party not a signatory to this Contract.

B. Liability

The EPA does not assume any liability to third parties with respect to losses due to bodily injury or property damages that exceed the limitations contained in the provisions of 28 U.S.C. §§ 1346(b), 2671-2680. To the extent permitted by State law, the State does not assume liability to any third parties with respect to losses due to bodily injury or property damage.

12. EMERGENCY RESPONSE ACTIVITIES

Any emergency response activities, as determined by the OSC, shall not be restricted by the terms of this Contract. The EPA, in consultation with the TNRCC, may suspend or modify the removal activities defined in the SOW for this Contract during and/or subsequent to any emergency response actions, in which case, the removal activities, cost share, or terms may be subject to amendment.

13. STATE REVIEW

The TNRCC shall review and provide comment, if necessary, on matters relating to the implementation of the removal action, pursuant to this RAC, within 30 calendar days of receipt of the documents.

14. TECHNICAL REPORTS

The EPA agrees to submit technical reports to the SPM after completion of the work. The reports will detail the technical progress made at the Site during the removal action.

15. RECORDS ACCESS

At the EPA's request and to the extent allowed by State law, the TNRCC shall make available to the EPA any information in its possession concerning the Site. At the TNRCC's request and to the extent allowed by Federal law, the EPA shall make available to the TNRCC any information in its possession concerning the Site. The recipient of any records must comply with the requirements regarding records access described in 40 C.F.R. §31.42(e). The recipient of any records must also require its contractor(s) to comply with the requirements regarding records access described in 40 C.F.R.

§ 31.36(i)(10). The EPA shall not disclose information submitted by the TNRCC under a claim of confidentiality unless the EPA is required to do so by Federal law and has given the TNRCC advance notice of its intent to release that information. Absent a prior confidentiality claim by the TNRCC, and with the exception of certain policy, deliberative, and enforcement documents which may be held confidential, the EPA may make said information available to the public without further notice.

The TNRCC shall not disclose information submitted by the EPA under a claim of confidentiality unless the TNRCC is required to do so by law and has given the EPA advance notice of its intent to release the information.

16. RECORDS RETENTION

All financial and programmatic records, supporting documents, statistical records, and other records related to the Site must be maintained by the TNRCC for a minimum of ten years following the submission of the final Financial Status Report to the EPA. If any litigation, claim, negotiation, audit, cost recovery, or other action involving the records has been started before the expiration of the ten-year period, the records must be retained by the TNRCC until completion of the action and resolution of all issues which arise from it, or until the end of the regular ten-year period, whichever is later. Microfilm copying must be performed in accordance with the technical regulations and records management procedures contained in 36 C.F.R. Part 1230 and EPA Order 2160.

17. FINANCIAL RESPONSIBILITIES OF THE PARTIES AND PAYMENTS

- A. The EPA will contribute ninety percent (90%) of the cost of the removal action described in the Removal Action Memorandum and the SOW, including change orders and claims agreed to by the EPA and the TNRCC.
- B. The TNRCC will contribute ten percent (10%) of the cost of the removal defined action described in the Removal Action Memorandum and the SOW, including change orders and claims agreed to by the EPA and the TNRCC. It should be noted that the TNRCC is voluntarily contributing to the removal action at the Site because immediate action is appropriate to protect human health and the environment. Additionally, the State or a political subdivision did not operate the Site at the time of the disposal of hazardous substances as referenced in 40 C.F.R. § 300.525. The TNRCC shall not be responsible for any portion of the EPA's intramural costs. The current total cost estimate for the removal action is \$410,000. The TNRCC's ten percent (10%) contribution is currently estimated at \$41,000.
- C. EPA Invoices and Reports to the TNRCC

The TNRCC shall not be billed for any removal action costs associated with the Site until the removal action is complete. An itemization of costs (invoice) will be furnished to the TNRCC by the EPA, within ninety days after completion of the removal action, for the State cost share requirements. This invoice will show total costs, Federal cost share, and the State cost share. The EPA will include an accounting system report for costs of contractors retained by the EPA to perform the removal action work, including change orders and claims.. Final reconciliation of removal action costs will be made at that time. The due date for payment will be forty-five (45) calendar days after billing.

All the EPA invoices shall be sent to the Contracting Support Section of the TNRCC as specified below, with a copy to the SPM at the address indicated in Paragraph 4(B) of this Contract:

Grace Windbigler
Mail Code 102
Contracting Support Section
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-2135

D. State Payments To EPA

All State payments shall be made payable to the EPA and sent to the Regional Financial Management Office as specified below, with a copy to the OSC at the address indicated in Paragraph 4(A) of this Contract:

United States Environmental Protection Agency
Financial Management Office
Attn: Collection Officer for Superfund
Little Bit Rad Superfund Site
P.O. Box 360582M
Pittsburgh, PA 15251

To ensure proper credit to the account, the words "Little Bit Rad Superfund Site, City of Beaumont, Jefferson County, Texas" must appear on the face of the check.

E. Interest

In the event the EPA does not receive payment within forty-five (45) calendar days from the billing date outlined in the invoice, interest shall accrue from the invoice date in accordance with 40 C.F.R. § 31.52 and 40 C.F.R. § 35.6815. Interest will be charged at the rate established for the Superfund Trust Fund, in accordance with the EPA Resource Management Directives System, Chapter 14, "Superfund Accounts Receivable and Billings."

The due date is the date or dates specified in this Contract unless the State invokes the provisions of Section 25, Issue Resolution, set forth in this Contract. If issue resolution is invoked, for purposes of interest calculation, interest will accrue on the unpaid portion of the final resolution amount, beginning on the established invoice date above.

18. CHANGE ORDER AND CLAIMS MANAGEMENT

The EPA or its agent(s) will conduct technical and administrative reviews of any contractor change order requests or claims. These reviews will examine the technical basis for the change order or claims and will determine whether they are merited. If any requested change orders/claims would alter the removal action or increase the costs, the EPA will consult with the TNRCC.

19. INSPECTION OF THE WORK

A. A pre-final inspection will be conducted upon preliminary project completion for the removal action at the Site. The pre-final inspection will be led by the OSC. Participants, to accompany the OSC, include the SPM, the removal action contractor, and the EPA oversight contractor

- B. The pre-final inspection will consist of a walk-through inspection of the entire project Site. This inspection will survey the completed Site work, determining whether the project is complete and consistent with the SOW. Jointly, the EPA and the TNRCC will determine if there are any outstanding items. An attempt shall be made to resolve all remaining issues.
- C. A pre-final inspection report will be provided by the EPA to the TNRCC for review. Acceptance of the resolutions specified in the pre-final inspection report is constituted by the TNRCC's signature on the report.

20. JOINT FINAL INSPECTION OF THE WORK

A. FINAL INSPECTION

A final inspection shall be conducted upon completion of any outstanding construction items for the State cost share removal action at or in connection with the Site. The final inspection will be led by the OSC. Participants, to accompany the OSC, include the SPM and all other appropriate parties as determined by the OSC.

B. FINAL CERTIFICATION

The final inspection will consist of a walk-through inspection of the project Site, with the inspection focusing on the outstanding construction items identified in the pre-final inspection. The OSC and the SPM will confirm that all outstanding items have been resolved. If any items are still unresolved, the inspection shall be considered a pre-final inspection requiring another pre-final inspection report. Upon satisfactory completion of the final inspection, the EPA will provide a copy of the final inspection report to the TNRCC.

C. ACCEPTANCE OF THE WORK

The removal action report will be reviewed by the EPA and the TNRCC. The OSC will coordinate, with the SPM, TNRCC's acceptance that the work is complete for the Site.

21. PROJECT CLOSEOUT

The EPA, in consultation with the TNRCC, will determine when the removal action described in the RAM and the SOW has been completed. Enforcement actions and other necessary activities may proceed independent of project closeout.

22. RESPONSIBLE PARTY ACTIVITIES

If at any time during the period of this contract, a responsible party comes forward and agrees to

perform any work covered by this Contract, this agreement shall be amended or terminated, as deemed appropriate by the EPA.

23. ENFORCEMENT, LITIGATION, AND COST RECOVERY

Notice of Intent to Settle or Initiate Proceedings

The EPA and the TNRCC may be entitled to assert claims against a third party (herein referred to as the potentially responsible party or "PRP") for reimbursement of any services, materials, monies or other things of value expended by the EPA or the TNRCC for the removal action.

The EPA and the TNRCC hereby agree that they shall cooperate in and coordinate efforts to recover their respective costs of the removal actions taken at the Site, including the negotiation of settlement and the filing and management of any judicial actions against PRPs. The parties shall promptly inform one another on the status of negotiations. Neither the EPA nor the TNRCC shall enter into a settlement with or initiate a judicial or administrative proceeding against any PRP for the recovery of such sums, except after having given notice in writing to the other party to this Contract, at least thirty (30) days prior to the date of proposed settlement or commencement of the proposed judicial or administrative proceedings. Neither the EPA nor the TNRCC shall attempt to negotiate for, or collect, reimbursement of any RAC-specific response costs, related to the Removal Action at the Site described in the SOW, on behalf of the other party, and any authority to do so is hereby expressly negated and denied.

24. FAILURE TO COMPLY WITH TERMS OF THE CONTRACT

If the TNRCC fails to comply with the terms of this Contract, the EPA, after providing sixty (60) days notice, may proceed under the provisions of Section 104(d)(2) of CERCLA, 42 U.S.C. § 9604(d)(2), and may seek in the appropriate court of competent jurisdiction to enforce this Contract or to recover any funds advanced or any costs incurred due to a breach of the Contract. If the EPA fails to comply with any requirements of this Contract, the TNRCC, after providing sixty (60) days notice, may seek in the appropriate court of competent jurisdiction to enforce the Contract or recover any funds advanced or any costs incurred due to a breach of the Contract.

25. ISSUE RESOLUTION

TNRCC and EPA acknowledge that it is in their best interest to identify disputes as soon as possible in the process and to resolve those disputes at the earliest possible opportunity. In the event of a dispute between the OSC and the SPM concerning any issue arising in connection with a site, the OSC and the SPM shall attempt to resolve the dispute informally, in consultation with their respective immediate supervisors and staff counsel. If the dispute is not resolved informally between the OSC and the SPM, the issue(s) will promptly be referred to the Director of the Remediation Division for

the TNRCC and the Chief of the Arkansas/Oklahoma/Texas Branch, Superfund Division, for EPA (collectively the First Tier agency representatives) for resolution. The formal dispute resolution process shall be initiated by either party with a written statement of dispute setting forth the nature of the dispute and the work affected by the dispute. The First Tier agency representatives shall consult with their respective counsel to determine if the dispute is purely technical, purely legal, or a mixture of technical and legal issues. Unless both parties and their counsel agree that the dispute involves technical issues only, then counsel shall participate in the resolution of the dispute at all levels of appeal. Within fourteen calendar days of receiving notice from either the RPM or the SAC that there is an unresolved dispute, the First Tier agency representatives shall discuss the matter at issue by a meeting or teleconference, assisted by the RPM and the SAC and other technical or legal staff as appropriate.

If the disputed issue cannot be resolved by the First Tier agency representatives within thirty calendar days of receipt of notice from the OSC and the SPM that there is an unresolved dispute, they will refer the dispute in a joint letter briefly describing the issue(s) to the Deputy Director, Office of Permitting, Remediation, and Registration, for TNRCC and the Director, Superfund Division, for EPA (collectively the Second Tier agency representatives). The Second Tier agency representatives may request a Joint Statement of Positions from their respective staff. The Joint Statement of Positions shall be exchanged between the parties and combined into one document in a point-counterpoint, or assertion-response format. The Joint Statement shall be completed within twenty-one calendar days of the request to prepare it. The Joint Statement may include appropriate issues such as the following:

1. A brief description of the disputed issue;
2. A description of the resolution of the issue sought by the agency, including any acceptable alternatives;
3. Citation to the particular subpart of the statute or regulation under which the dispute arises and a hard copy of the excerpt of the statute or regulation in question;
4. An estimate of the schedule within which the dispute must be resolved to ensure orderly progress on site investigations, studies, or field work on the site which is the subject of the dispute; or
5. A discussion of the potential impact of resolution of the dispute on cost recovery and injunctive litigation.

The decision of the Second Tier agency representatives (and counsel, if applicable) will be summarized in writing within thirty calendar days after referral from the First Tier agency representatives. If the disputed issue cannot be resolved by the Second Tier agency representatives within thirty calendar days (the 30-day time frame may be subject to short extensions by mutual agreement of the officials at whose level the dispute rests), they will refer the problem to the Executive Director of the TNRCC and the EPA Regional Administrator (collectively the Third Tier agency representatives). The Third Tier agency representatives may request a Joint Statement of Positions from their respective staff if a Joint Statement was not prepared during Tier Two discussions. The decision of the Third Tier agency

representatives will be summarized in writing within thirty calendar days after referral from the Second Tier agency representatives.

If, after consultation between the Third Tier agency representatives no resolution of the dispute can be reached, then the dispute resolution process is terminated and each agency may proceed independently according to its rights under CERCLA, Federal and State law.

At whatever level the dispute is resolved, the resolution of the dispute shall be documented in writing and the identification of the agency representatives resolving the dispute shall be included.

26. AMENDABILITY

This Contract may be amended at any time for reasons including, but not limited to, the revision of costs or terms to undertake modifications to the removal activities. Written amendments are required when alterations to CERCLA-funded activities are necessary, or when alterations impact the State's cost share by causing it to increase by more than fifteen percent of the amount estimated in this Contract.

Such amendments must include a SOW for the amendment. Any change(s) in this Contract must be made in writing and agreed to by both the TNRCC and the EPA, except as provided in this Contract, and must be reflected in all response agreements affected by the change(s).

27. RECONCILIATION PROVISION

The EPA will not use overpayments by the TNRCC under this Contract to satisfy obligations at another site.

28. TERMINATION OF THIS CONTRACT

This Contract shall terminate when:

- A. Termination may occur for cause, conclusion, or failure to comply. The parties may enter into a written termination agreement, which will establish the effective date for the termination of this Contract, the basis for settlement of termination costs, and the amount and date of any sums due either party. Such reconciliation costs will include all project costs incurred, as well as any close-out costs, or
- B. If, at any time during the period of this Contract, performance of either all or part of the work described in the SOW is voluntarily undertaken, or undertaken for any other reason by persons or entities not party to this Contract, then this Contract will be modified or terminated as appropriate to allow these actions. Upon modification or termination, the parties to this

agreement shall be relieved from further duties to perform those actions undertaken by persons or entities not party to this Contract, or

- C. (1) Removal activities at the Site have been satisfactorily completed and payments have been made, as specified under this Contract, and
- (2) All State cost-share payments have been submitted to the EPA, and
- (3) The Financial Management Officer has a final accounting of all project costs, including change orders and contractor claims, and
- (4) A final cost reconciliation is made in accordance with Section 27 of this Contract, and
- (5) The EPA provides written notice to TNRCC.

29. EXECUTION

In witness whereof, the parties hereto have executed this Contract in two (2) copies, each of which shall be deemed an original. The undersigned representative of each party to this Contract certifies that he or she is fully authorized by the U.S. Environmental Protection Agency or the State of Texas, respectively, to enter into the terms and conditions of this Contract and to execute and legally bind that party to it.

This Contract and its attachments constitute the complete agreement of the parties and there are no other agreements, oral or otherwise, upon which any party relies.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Myron O. Knudson Date 3/21/01
Myron O. Knudson, P.E., Director
Superfund Division

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Jacqueline S. Hance Date 4-18-01
Name:
Title: